

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

99-E-0410

In the Matter of the Liquidation of  
Tufts Health Plan of New England, Inc.

**LIQUIDATOR'S MOTION FOR TREATMENT OF CERTAIN UNEARNED  
PREMIUM CLAIMS AS COSTS OF ADMINISTRATION**

Paula T. Rogers, Commissioner of Insurance of the State of New Hampshire and the duly appointed Liquidator (the "Liquidator") of Tufts Health Plan of New England, Inc. ("TNE"), by her attorneys, moves for the entry of an order allowing her to treat certain claims for unearned premium relating solely to a period of time after February 2, 2000, as administration costs pursuant to RSA 402-C:44 (I). In support of her motion,<sup>1</sup> the Liquidator states as follows:

1. The Petition for Liquidation of TNE was filed on December 20, 1999 (the "Petition Date"), and the Order for Liquidation entered thereon on January 3, 2000. Pursuant to RSA 420-C:22, insurance coverage for TNE subscribers was extended through and including February 2, 2000, unless earlier replaced by the respective subscribers. Notice of the Order for Liquidation was mailed to all known creditors and subscribers of TNE on January 13 and 14, 2000, pursuant to RSA 402-C:26. In addition, notice in the form of an "open letter" from the Liquidator was released to the media in the States of Maine, New Hampshire and Rhode Island, the three states in which TNE was licensed to do business.

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<sup>1</sup> The number of parties who have intervened in this matter have rendered it impractical for the Liquidator to attempt to obtain the concurrence of all such parties prior to filing this motion. The Liquidator respectfully requests that the court excuse her from compliance with Superior Court Rule 57-A, to the extent that Rule 57-A applies to this motion, pursuant to Superior Court Rule 116.

2. Tufts Associated Health Maintenance Organization, Inc. (“TAHMO”) rendered administrative services to TNE both before and after the Petition Date, including preparing and rendering invoices for monthly premiums due TNE from its policyholders. According to TAHMO, bills were rendered on a monthly basis, although the date on which invoices were issued was not uniform. Some policyholders were invoiced as of the first day of each month; others as of the fifteenth, depending on the terms of the respective policy issued by TNE. *See* Affidavit of Timothy J. Ryan submitted in support hereof.

3. Shortly after the entry of the Order of Liquidation and the Liquidator’s retention of The Pace Group, Inc. (“Pace”) as her consultants, TAHMO was requested to modify its invoicing of TNE policyholders to accommodate the fact that TNE insurance coverage would, by statute, terminate after February 2, 2000. Specifically, the Liquidator requested that TAHMO invoice policyholders only for the actual period of coverage, rather than through any date after February 2. Thus, policyholders invoiced as of the first of each month would only receive a prorated premium invoice for coverage for February 1 through February 2, and policyholders invoiced as of the fifteenth of each month would receive a prorated premium invoice for January 15 through February 2.

4. In response to the Liquidator’s request, TAHMO stated that it was not administratively feasible to timely prepare a prorated premium bill for subscribers for the two days of February 2000, for which TNE coverage was statutorily extended. This infeasibility stemmed from the non-uniformity of TNE’s billing dates and billing frequencies, and TAHMO’s inability to quickly and accurately calculate the prorated premium and generate prorated invoices without the expenditure of excessive data programming resources, for which TAHMO indicated it would seek reimbursement from the Liquidator. As a result, due to the press of time in order to

allow for timely billing of the premium for coverage in February, 2000, the Liquidator approved the billing of the regular amount of the February monthly premium for those subscribers who had not notified the Liquidator or TNE that they had secured replacement coverage effective prior to February 1, 2000.<sup>2</sup>

5. The administrative necessity of billing certain subscribers their customary fixed monthly premium for coverage during February, 2000, for what amounted to no more than two days of coverage through the February 2 termination date, generated claims for unearned premiums owed to those subscribers.

6. The Liquidator believes that it is most equitable under the circumstances to treat as costs of administration those unearned premium claims relating to periods after February 2, 2000, and arising solely and specifically from invoices authorized by the Liquidator to be sent after the Petition Date. Unearned premium claims relating solely to a period prior to February 3, 2000, do not implicate such equitable concerns and, as to those claims, the Liquidator believes that Class II status is appropriate pursuant to RSA 402-C:44 (II).<sup>3</sup>

7. As detailed in Mr. Ryan's affidavit, the allowance of those claims arising from the Liquidator's authorizing of premium invoicing for coverage for any period after February 2, 2000 as costs of administration will likely have minimal adverse impact on other claimants with policy-related claims. The amount of such claims is estimated to be not more than \$256,000 and, based

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<sup>2</sup> Under RSA 402-C:25 (XXII), the Liquidator may "do such other acts not specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in the aid of the purpose of the liquidation."

<sup>3</sup> RSA 402-C:44 provides, in part, that "[t]he first \$50 of the amount allowed on each claim in the classes under paragraphs II, V, and VI . . . shall be deducted from the claim. Claims may not be cumulated by assignment to avoid duplication of the \$50 deductible. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class."

on information currently available to the Liquidator, is likely to be lower. By contrast, the denial of this motion will impose an inequitable hardship on TNE subscribers who, by administrative necessity after the Petition Date, were affirmatively invoiced for, and who paid, premium for coverage that could not legally be provided after February 2, 2000. The Liquidator believes this hardship would be compounded by the \$50 deductible imposed on Class II claims by RSA 402-C:44, which would reduce or eliminate what the Liquidator believes are claims properly payable in full as Class I costs of administration.

WHEREFORE, for all of the foregoing reasons, the Liquidator requests the entry of an order allowing her to treat as costs of administration those claims for unearned premium arising solely and specifically from invoices authorized by the Liquidator to be sent after the Petition Date for coverage for a period of time after February 2, 2000, and granting her such other and

further relief as the court deems just.

Dated: April 11, 2000

Respectfully submitted,

PAULA T. ROGERS, COMMISSIONER  
OF INSURANCE OF THE STATE OF  
NEW HAMPSHIRE, AS LIQUIDATOR

By her attorneys,

PHILIP T. MCLAUGHLIN  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of April, 2000, a copy of the foregoing was sent via facsimile and via first class mail, to the following on the attached Service List.

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Bruce A. Harwood, Esquire

